

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3151 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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ABDULBHAI N SHAIKH

Versus

DIVISIONAL CONTROLLER  
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Appearance:

MR V.H. PATEL for Petitioner

MR HARDIK C RAWAL for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/02/2000

ORAL JUDGEMENT

The petitioner seeks a direction on the respondents to permit him to serve upto the age of 60 years with the respondent No. 3. According to the petitioner he joined service as a fitter in one Battiwala Transport Company where he worked from 1.6.1945 to

2.11.1949. Thereafter, as the transport services were nationalised, all the transport Companies were taken over by the then Bombay State Road Transport Corporation and accordingly M/s. Jivrambhai Kalyanbhai Battiwala, a private transport Company, carrying passengers was also taken over by the said State Road Corporation. The petitioner accordingly became an employee of the respondent Corporation and was absorbed thereunder with an appointment as a fitter in the Nadiad Division. The petitioner relies upon the certificate dated 5.1.1950 issued by M/s. Jivrambhai Kalyanbhai Bhattiwala to show that he was serving with them prior to his absorption with the respondent Corporation. According to the petitioner, as per the settlement arrived at between the Workers Union and the Corporation on 12.3.1959, the age of superannuation was fixed at 58 years, if the workman was physically and mentally fit and his work was satisfactory, as against his normal retiring age of 55 years. However, the age of superannuation was to be treated as 60 years in respect of workmen, except drivers, coming old operators or those belonging to backward classes, according to the Corporation's Resolution No. 309(E) dated 19.3.1953. The petitioner accordingly made an application on 29.3.1988 for extending his services upto 60 years. The petitioner was however informed by the respondent No. 1 vide letter dated 7.5.1988 that on enquiry it was found that there was no proof of the petitioner's having been absorbed from the service of a private operator. The petitioner was therefore retired at the age of 58 years i.e. on 30.6.1988 under orders Annexures F and G to the petition.

It has been brought on record in the affidavit-in-reply filed by the respondent Corporation that the petitioner had made an application on 9.6.1987 to the Corporation wherein he had stated that he was formerly serving with Viramgam Transport and Gujarat Transport at the time when they were taken over by the State Transport Corporation. However, the Gujarat Transport and Viramgam Transport had already ceased to exist from 1945, and therefore the assertions made by the petitioner in his application dated 9.6.1987 was found to be wrong and in conflict with the case put up by him, that he was working with a private operator M/s. Jivrambhai Kalyanbhai Battiwala & Company, in the certificate produced by him at annexure-A to the petition. It is stated in paragraph 9 of the affidavit-in-reply that the petitioner did not in the past produce any such letter. A copy of the application which was made by the petitioner on 9.6.1987 has been annexed to the affidavit-in-reply filed by the

Corporation. That clearly does not mention the fact that the petitioner was serving with the private operator now named by him and from whom he has obtained certificate at Annexure-A to the petition. There was only a reference to Viramgam Transport and Gujarat Transport in that application. Even in his application dated 13.10.1987 made to the Corporation seeking extension, it was not stated that he was working with M/s. Jivrambhai Kalyanbhai Battiwala and Company. There too he had referred to Viramgam Transport and Gujarat Transport and no such certificate was produced along with that application. It is only in his application dated 29.3.1988 that he came out with different version. It has been stated by the respondent Corporation in paragraph 10 of its affidavit-in-reply that service book of the petitioner does not show that he was absorbed from any private transport company as alleged by him or that he was absorbed on the closing down of M/s. Kalyanbhai Battiwala as alleged. It therefore would appear that the petitioner has tried to make out his version with a view to show that his case fell within the ambit of the policy reflected in the orders dated 12.3.1959 under which only workmen, except drivers, coming from old operators or those belonging to backward class were entitled to continue in service upto 60 years of age instead of 58 years, provided they were physically and mentally fit and their work was satisfactory after they attained the age of 55 years.

In this view of the matter, the petitioner has failed to make out any case for his continuance in service till he attained the age of 60 years. The petition is therefore, rejected. Rule is discharged with no order as to costs.

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